

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

IN THE MATTER OF: Sand Creek)	
Superfund Site)	
)	AGREEMENT AND COVENANT
)	NOT TO SUE : NDSC LLC
UNDER THE AUTHORITY OF THE)	
COMPREHENSIVE ENVIRONMENTAL)	
RESPONSE, COMPENSATION, AND)	EPA Docket No. CERCLA-08-2003-0008
LIABILITY ACT OF 1980, 42 U.S.C.)	
§ 9601, <u>et seq.</u> , as amended.)	
)	

I. INTRODUCTION

This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States on behalf of the Environmental Protection Agency (“EPA”), the State of Colorado (“State”), and NDSC, LLC (collectively the “Parties”).

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States. The State of Colorado enters into this Agreement pursuant to Section 25-16-103 C.R.S.

This Agreement specifically concerns two parcels of land within the Sand Creek Industrial Superfund Site (“Site”). The Site is located at 52nd and Dahlia St., approximately five miles northeast of downtown Denver, Colorado in a heavy industrial area. The Site occupies about 550 acres, partly within the City and County of Denver and partly within Commerce City, which is located in Adams County. The parcels covered by this Agreement are both in Commerce City.

These two parcels are owned by the Colorado Organic Chemical Company (hereinafter the “COC Parcel”) and the Colorado Eastern Railroad Company (hereinafter the “CERC Parcel”). NDSC LLC of 12471 Tower Road, Commerce City, Colorado desires to purchase these parcels in order to conduct commercial development.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VII, VIII, IX, and X, the potential liability of the Settling Respondent for the Existing Contamination at the Property which would otherwise result from Settling Respondent becoming the owner of the Property.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA and the State of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. “EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. “Existing Contamination” shall mean:

a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;

b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and

c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

3. “Parties” shall mean the United States on behalf of EPA, the State, and the Settling Respondent.

4. “Property” shall mean that portion of the Site, encompassing approximately 11 acres, which is described in Exhibit 1 of this Agreement.

5. “Settling Respondent” shall mean NDSC LLC.

6. “Site” shall mean the Sand Creek Industrial Superfund Site encompassing approximately 550 acres, located at approximately 52nd and Dahlia, and partly within the City and County of Denver and partly within Commerce City, which is located in Adams County, and depicted generally on the map attached as Exhibit 2. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located.

7. “State” shall mean the State of Colorado, its departments, agencies, and instrumentalities.

8. “United States” shall mean the United States of America, its departments, agencies, and instrumentalities.

III. STATEMENT OF FACTS

9. The Site was listed on the NPL in December of 1982. The Site was deleted from the NPL on December 20, 1996. The two parcels within the Property covered by this Agreement are owned by the Colorado Organic Chemical Company (“COC”) and the Colorado Eastern Railroad Company (“CERC”). COC and CERC have each entered into consent decree settlement agreements with the United States and the State whereby, if the United States brings a prospective purchaser to these owners, these owners will deed their respective parcels to the prospective purchaser. The Property covered by this Agreement was cleaned up using Superfund and State funds.

10. The Settling Respondent represents, and, for the purposes of this Agreement, EPA and the State rely on those representations that Settling Respondent has no prior involvement with the Property and the Site.

IV. PAYMENT

11. In consideration of and in exchange for the United States' and State of Colorado's Covenant Not to Sue in Section VIII herein and Removal of Lien in Section XX herein, Settling Respondent agrees to pay the sum of \$290,000 in accordance with the Offer to Purchase Real Property, attached hereto as Exhibit 3. Payment will be made at the time set for closing on the sale of the Property. Such closing shall be set by mutual agreement of the parties, however, such closing shall not be set more than 30 days after the effective date of this Agreement. The payments received under this Agreement shall be disbursed pursuant to the terms of the consent decree settlement agreements attached hereto as Exhibits 4 & 5.

12. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

13. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA and the State, their authorized officers, employees, representatives, and all other persons performing response actions under EPA or State oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site under federal and State law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, (“RCRA”) et seq., and any other applicable Federal or State statute or regulation, including any amendments thereto.

14. Within 15 days of the date of acquisition of the Property by Settling Respondent, Settling Respondent shall record the environmental covenants attached as Exhibit 6 with the Clerk and Recorder’s Office, Adams County, State of Colorado. The Settling Respondent shall ensure that assignees, successors in interest, lessees, and sublessees of the Property shall provide the same access and cooperation and implementation of Institutional Controls. The Settling

Respondent shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section XI (Parties Bound/Transfer of Covenant), of the Agreement.

VI. APPROPRIATE CARE/COOPERATION

15. Notwithstanding any other provision of this Agreement, Settling Respondent shall exercise appropriate care, as set forth in section 101(40)(D) of CERCLA, 42 U.S.C. §9601(40)(D), and shall comply with all applicable local, State, and federal laws and regulations in regards to Existing Contamination. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances or pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any

other law, immediately notify EPA and the State of such release or threatened release.

VII. CERTIFICATION

16. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA and the State all information known to Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances or pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States and the State determine that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States and the State, shall be null and void, and the United States and the State reserve all rights they may have.

VIII. UNITED STATES' AND STATE OF COLORADO'S COVENANT NOT TO SUE

17. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), of this Agreement, the United States and the State covenant not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

IX. RESERVATION OF RIGHTS

18. The covenant not to sue set forth in Section VIII above does not pertain to any matters other than those expressly specified in Section VIII (United States' and State of Colorado's Covenant Not to Sue). The United States and the State reserve and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section V (Access/Notice to Successors in Interest), Section VI (Appropriate Care/Cooperation), Section XIV (Payment of Costs);

(b) any liability resulting from past or future releases of hazardous substances or pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances or pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

19. With respect to any claim or cause of action asserted by the United States and the State, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

20. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States or the State may have against any person, firm, corporation or other entity not a party to this Agreement.

21. Nothing in this Agreement is intended to limit the right of EPA or the State to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA or the State in exercising its authority under federal or State law. Settling Respondent acknowledges that it is purchasing Property where additional response actions may be required.

X. SETTling RESPONDENT'S COVENANT NOT TO SUE

22. In consideration of the United States' and the State of Colorado's Covenant Not To Sue in Section VIII of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States or the State, their authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the

United States or the State, including any department, agency or instrumentality of the United States or the State under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's or the State's oversight of such activities or approval of plans for such activities.

23. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XI. PARTIES BOUND/TRANSFER OF COVENANT

24. This Agreement shall apply to and be binding upon the United States, and the State, and shall apply to and be binding upon the Settling Respondent, its officers, directors, and employees. The United States' and State of Colorado's Covenant Not to Sue in Section VIII and Contribution Protection in Section XVIII shall apply to Settling Respondent's officers, directors, or employees, to the extent that the alleged liability of the officer, director, or employee is based on its status and in its capacity as an officer, director, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

25. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA and the State in their sole discretion.

26. The Settling Respondent agrees to pay the reasonable costs incurred by EPA and the State to review any subsequent requests for consent to assign or transfer the benefits conferred by this Agreement.

27. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA, the State, and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VII of this Agreement in order for the Covenant Not to Sue in Section VIII to be available to that party. The Covenant Not To Sue in Section VIII shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA and the State.

XII. DISCLAIMER

28. This Agreement in no way constitutes a finding by EPA or the State as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA or the State that the Property or the Site is fit for any particular purpose.

XIII. DOCUMENT RETENTION

29. The Settling Respondent agrees to retain and make available to EPA and the State all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA and the State of the location of such documents and shall provide EPA and the State with an opportunity to copy any documents at the expense of EPA or the State.

XIV. PAYMENT OF COSTS

30. If the Settling Respondent fails to comply with the terms of this Agreement, including, but not limited to, the provisions of Section IV (Payment), of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the United States and the State to enforce this Agreement or otherwise obtain compliance.

XV. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Agreement with respect to the United States, EPA, State, and Settling Respondent, respectively.

As to the United States:

As to DOJ: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ# 90-11-3-1697)

Washington, D.C. 20044-7611

As to EPA:

Site Attorney
Sand Creek Superfund Site
Mail Code: 8ENF-L
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

Remedial Project Manager
Sand Creek Superfund Site
Mail Code: 8EPR-SA
U.S. Environmental Protection Agency,
Region 8
999 18th Street, Suite 300
Denver, Colorado 80202

As to State:

State Project Officer
Sand Creek Superfund Site
Colorado Department of Public Health and Environment
4300 Cherry Creek Dr. S.
Denver, Colorado 80246-1530

Colorado Department of Law
Natural Resources Section
1525 Sherman Street, Fifth Floor
Denver, CO 80203
Attention: First Assistant Attorney General for -Environmental Quality
Unit

Site Attorney
Sand Creek Superfund Site
Colorado Attorney Generals Office
1525 Sherman Street, Fifth Floor
Denver, CO 80203

As to Settling Respondent:

NDSC LLC
12471 Tower Road
Commerce City, CO 80022

R. Gregory Stutz
Stutz, Miller & Urtz, LLC
1660 Lincoln Street, Suite 2850
Denver, CO 80264

XVI. EFFECTIVE DATE

32. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA and the State have fully executed the Agreement after review of and response to any public comments received.

XVII. TERMINATION

33. If any Party believes that any or all of the obligations under Section V (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XVIII. CONTRIBUTION PROTECTION

34. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that the Settling Respondent is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

35. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

36. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States and the State within 10 days of service of the complaint on them.

XIX. EXHIBITS

_____ 37. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

38. Exhibit 2 shall mean the map depicting the Site.

39. Exhibit 3 shall mean the Offer to Purchase Real Property signed by NDSC LLC on January 25, 2002.

40. Exhibit 4 shall mean the consent decree with COC dated October 16, 1998.

41. Exhibit 5 shall mean the consent decree with CERC dated September 9, 1999.

42. Exhibit 6 shall mean the environmental covenant.

XX. REMOVAL OF LIEN

43. Subject to the Reservation of Rights in Section IX of this Agreement, upon payment of the amount specified in Section IV (Payment), EPA agrees to remove any lien it may have on the Property under Section 107(l) of CERCLA, 42 U.S.C. § 9607(l), as a result of response action conducted by EPA at the Property.

XXI. PUBLIC COMMENT

44. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BY:

PATRICIA D. HULL acting for/ 5/8/03
ROBERT E. ROBERTS Date
Regional Administrator
U.S. Environmental Protection Agency, Region 8

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE
BY:

SIGNED 6.3.03
THOMAS L. SANSONETTI Date
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

IT IS SO AGREED:

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
BY:

SIGNED _____
DOUGLAS H. BENEVENTO Date
Executive Director
Colorado Department of Public Health and Environment

Approved as to form:

SIGNED 4/16/03
DAVID KREUTZER Date
Assistant Attorney General

IT IS SO AGREED:

NDSC LLC
BY:

SIGNED 4-2-03
Ray Weigel, Mgr. Date

Exhibit 1
Legal Description of Property

NDSC PPA

- A. Seven (7) acres, more or less, of real property known as Tracts # 31a, 31b, and 43 located at the Northwest corner of the Chicago Rock Island & Pacific Railroad R.O.W., and Dahlia Street, in Commerce City, Colorado.

1. Legal Description Tract #31a

All that part of the Southeast Quarter of the Northwest Quarter (SE1/4 NW1/4) of Section Eighteen (18), Township Three (3) South, Range Sixty-seven West, Adams County, Colorado, lying Southerly and Easterly of State Highway No. 6 and Northerly of a line drawn parallel with and 75.00 feet Southerly from the center-line of the main track of Chicago, Rock Island and Pacific Railroad Company as the said center-line is now surveyed, staked, and located, over and across said tract of land, **said center-line being more particularly described as follows:** Beginning at a point in the East line of the Northwest Quarter (NW1/4) of said Section Eighteen (18), which is 688.35 feet North of the Southeast corner of said Northwest Quarter (NW1/4) and extending thence Northwesterly along a 1° 15' 00" curve concave to the Southwest a distance of 206.10 feet to a point on the Easterly line of said old U.S. Highway No. 6 containing one(1) acre, more or less.

2. Legal Description Tract #31b

A parcel of land located in the Northwest Quarter (NW1/4) of Section Eighteen (18), Township Three (3) South, Range Sixty-seven (67) West of the Sixth Principal Meridian (P.M.), Adams County, Colorado being more particularly described as follows, to wit:

All that portion of vacated State Highway No. 81 (Old Highway No. 6), which is the tract of land conveyed by Walter S. Cheesman Realty Company to the County of Adams, Colorado, by quit claim deed recorded in Book 210 at Page 132 of the records of Adams County, Colorado, as corrected by quit claim deed recorded in Book 332 at Page 473 of the records of said Adams County, Colorado, which said portion is lying Northerly, of a line drawn parallel with and 75.00 feet Southerly from the center-line of the main track of Chicago, Rock Island and Pacific Railroad Company as the **said center-line** is now surveyed, staked, and located, over and across said tract of land, **said center-line being more particularly described as follows:** Beginning at a point in the East line of the Northwest Quarter (NW1/4) of said Section Eighteen (18), which is 688.35 feet North of the Southeast corner of said Northwest (NW1/4); thence Northwesterly along a 01° 15' curve concave to the Southwest a distance of 406.10 feet to a point on the Westerly line of said old U.S. Highway No. 6, except that portion of said tract, if any conveyed by said Railroad Company to the Globe Chemical Company by deed dated November 13, 1953.

3. Legal Description Tract #43

That part of the Northwest Quarter (NW1/4) of Section Eighteen (18), Township Three (3) South, Range Sixty-seven (67) West of the Sixth

Principal Meridian (P.M.), Adams County, Colorado being more particularly described as follows, to wit:

Commencing at the West Quarter (W1/4) corner of said Section Eighteen (18); thence South 89° 28' East, along the South line of said Northwest Quarter (NW1/4) a distance of 818.60 feet; thence North 00° 32' East, a distance of 30.00 feet to a point on the North line of 52nd Avenue; thence North 32 ° 47' East a distance of 1,431.80 feet (Line A), more or less, to a point 75.00 feet Northerly of the center-line of the main track of the Chicago, Rock Island and Pacific Railroad Company; the point of beginning: thence Southeasterly along a line drawn 75.00 feet Northerly of said main track center-line a distance of 750.00 feet, more or less, to a point on the West line of vacated State Highway No. 81 (Old Highway No. 6); thence Southerly and Westerly along the Southerly and Westerly lines of vacated State Highway No. 81 (Old Highway No. 6) to a point on the Northerly line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Globe Chemical Company on November 13, 1953, and recorded in Book 482 at Page 355, said point being on a line, drawn parallel with and 75.00 feet Southerly from the center-line of the said main track center-line; thence Northwesterly along the Northerly sale line, said sale line being on a line drawn parallel with and 75.00 feet, more or less, Southerly from the said main track center-line a distance of 135.50 feet, to a point on a line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Globe Chemical Company on December 8, 1964; thence Northwesterly along the Northerly sale line, a distance of 100 feet; thence Southerly along the Westerly sale line to a point on a line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Globe Chemical Company on October 12, 1967; thence Northwesterly along the Northerly sale line, said sale line being on a line drawn parallel with and 75.00 feet Southerly from the said main track center-line, to its intersection with Line A; thence along the Northerly and Westerly lines of a sale by J.B. Angell to Martinson Construction on March 7, 1952; thence along the Southerly line of a sale by Martnison Construction Company to R.A. Husted on June 28, 1949, recorded in Book 384, at Page 414 on November 21, 1949; thence Northeasterly along the Easterly right-of-way line of U.S. Highway No. 6 to a point on the Southerly line of a sale by the Chicago, Rock Island and Pacific Railroad Company to Union Supply Company on June 11, 1954; thence along the Southeasterly sale line to the point of beginning.

- B. Four (4) acres, more or less, of real property known as Tracts # 16, 18, and 29, also known as 5321 Dahlia St., on the South side of the Chicago Rock Island & Pacific Railroad R.O.W., just West of Dahlia Street, and North of East 52nd Ave in Commerce City, Colorado.

- i. Legal Description Tracts #16, #18, and #29, a.k.a. 5321 Dahlia Street
All that part of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more fully described as follows, to-wit:

Commencing at the West 1/4 corner of said Section 18; Thence South 89 degrees 28 minutes East along the South line of said Northwest 1/4 a distance of 818.6 feet; Hence North 00 degrees 32 minutes East, a distance of 30 feet to a point on the North line of 52nd Avenue; Thence North 32 degrees 47 minutes East, a distance of 1121.5 feet; Thence South 57 degrees 13 minutes East, a distance of 576.7 feet to the true point of beginning. From true point of beginning thence North 32 degrees 47 minutes East, a distance of 238.8 feet; Thence South 59 degrees 52 minutes East, a distance of 235.5 feet to a point in the centerline of the abandoned road; Thence on a curve to the right, having a radius of 1432.6 feet, a distance of 250 feet to a point on curve, the long chord of which bears South 40 degrees 29 minutes West, a distance of 249.7 feet; Thence North 57 degrees 13 minutes West, a distance of 200 feet to the point of beginning.

And also

That part of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more fully described as follows, to wit: Commencing at the West 1/4 corner of said section 18; thence East along the South line of said Northwest 1/4, a distance of 813.6 feet; Thence North 00 degrees 32 minutes East, a distance of 30 feet to a point on the North line of 52nd Avenue; Thence North 32 degrees 47 minutes East, a distance of 1,121.5 feet; Thence South 57 degrees 13 minutes East, a distance of 576.7 feet to the true point of beginning.

From true point of beginning, thence North 32 degrees 47 minutes East, a distance of 238.8 feet; Thence North 59 degrees 52 minutes West, a distance of 100 feet; Thence South 32 degrees 47 minutes West, a distance of 234.18 feet; Thence South 57 degrees 13 minutes East, a distance of 99.89 feet to point of beginning.

And also

A portion of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, described as follows:

Beginning at the West 1/4 corner of said section 18; Thence South 89 degrees 28 minutes East, along the South line of said Northwest 1/4 818.6 feet; Thence North 00 degrees 32 minutes East, 30 feet to the North line of 52nd Avenue; Thence North 32 degrees 47 minutes East 1047 feet to the

true point of beginning; Thence South 57 degrees 13 minutes East, 752 feet to the centerline of vacated State Highway no. 81 (old U.S. Highway no. 6); Thence Northeasterly on a curve to the left along said centerline to the Southeast corner of the property described in deed dated November 13, 1953, from Chicago Rock Island and Pacific Railroad Company to Globe Chemical Company, Inc., and recorded in book 482 at page 355; Thence on a line bearing North 57 degrees 13 minutes West, a distance of 299.89 feet; Thence North 32 degrees 47 minutes East, a distance of 234.18 feet to a point 75 feet Southerly from the centerline of the Chicago, Rock Island and Pacific Railroad Company's main tract, As measured at right angles thereto; Thence Northwesterly along a line 75 feet distant from and parallel with said Chicago, Rock Island and Pacific Railroad. Company's main track centerline to the intersection with a line bearing North 32 degrees 47 minutes East from the true point of beginning; Thence South 32 degrees 47 minutes West along said last described line to the true point of beginning. Excepting therefrom:

That part of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more particularly described as follows; Commencing at the West 1/4 corner of said Section 18; thence East along the South line of said Northwest 1/4, a distance of 818.6 feet; Thence North 00 degrees 32 minutes 00 seconds East, a distance of 30.00 feet to a point on the North line of 52nd Avenue; thence North 32 degrees 47 minutes 00 seconds East, a distance of 1121.5 feet; Thence South 57 degrees 13 minutes 00 seconds East, a distance of 576.7 feet; Thence North 32 degrees 47 minutes 00 seconds East, a distance of 106.45 feet to the true point of beginning; from said true point of beginning; Thence North 32 degrees 47 minutes 00 seconds East, a distance of 132.35 feet; Thence North 59 degrees 52 minutes 00 seconds West, a distance of 100.00 feet; Thence South 32 degrees 47 minutes 00 seconds West, a distance of 132.37 feet; Thence South 59 degrees 52 minutes 46 seconds East, a distance of 100.00 feet to the true point of beginning.

Also except:

A parcel of land located in the Southeast 1/4 of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, more particularly described as follows: Commencing at the West 1/4 corner of said Section 18; Thence South 89 degrees 28 minutes 00 seconds East along the South line of said Northwest 1/4, a distance of 818.60 feet; thence North 00 degrees 32 minutes 00 seconds East, a distance of 30 feet to a point on the North line of 52nd Avenue; Thence North 32 degrees 47 minutes 00 seconds East, a distance of 1121.50 feet; Thence South 57 degrees 13 minutes 00 seconds East, a distance of 576.70 feet; Thence North 32 degrees 47 minutes 00 seconds East, a distance of 106.45 feet to the true point of beginning; from said true point of beginning thence North 32 degrees 47 minutes 00 seconds East a distance of 132.35 feet; Thence South 59 degrees 52 minutes 00 seconds East, a distance of

235.50 feet to a point in the centerline of abandoned road; thence Southwesterly. On a curve to the right having a radius of 1432.60 feet along the centerline of abandoned road a distance of 134.42 feet, the long chord of which bears South 40 degrees 32 minutes 41 seconds West, a distance of 134.37 feet; Thence North 59 degrees 52 minutes 46 seconds West, a distance of 217.34 feet, more or less, to the true point of beginning.

And also except:

A portion of the Northwest 1/4 of Section 18, Township 3 South, Range 67 West of the 6th Principal Meridian, described as follows:

Beginning at the West 1/4 corner of said Section 18; Thence South 89 degrees 28 minutes east along the South line of said Northwest 1/4, 818.6 feet; Thence North 00 degrees 32 minutes East 30 feet to the North line of 52nd Avenue; Thence North 32 degrees 47 minutes East 1047 feet to the true point of beginning; Thence continuing along the aforesaid course 236.11 feet to a point 75.00 feet Southerly from the centerline of the Chicago Rock Island and Pacific Railroad mainline, as measured at right angles thereto; Thence Southeasterly along a line 75.00 feet distance from and parallel with said Chicago, Rock Island and Pacific Railroad centerline, a distance of 70.00 feet; Thence South 44 degrees 05 minutes 44 seconds West, a distance of 251.13 feet; Thence North 57 degrees 13 minutes West, a distance of 20.00 feet to the true point of beginning.

Exhibit 2
Site Map

NDSC PPA

Exhibit 3
Offer to Purchase Real Property

NDSC PPA

Exhibit 4
Consent Decree with COC

NDSC PPA

Exhibit 5
Consent Decree with CERC

NDSC PPA

Exhibit 6
Environmental Covenant

NDSC PPA

**IF YOU WOULD LIKE COPIES OF EXHIBITS 2 THROUGH 6, PLEASE CONTACT
THE REGIONAL HEARING CLERK**

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JUNE 17, 2003.